

MEETING  
STATE OF CALIFORNIA  
STATE LANDS COMMISSION

ORIGINAL

STATE CAPITOL  
ROOM 447  
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 23, 1992

10:00 A. M.

Ronald J. Peters  
Certified Shorthand Reporter  
License Number 2780

A P P E A R A N C E SCOMMISSIONERS:

MR. GRAY DAVIS, State Controller, represented by  
MS. CLEATTA SIMPSON

HONORABLE LEO T. McCARTHY, Lieutenant Governor

MR. THOMAS W. HAYES, Director of Finance, represented  
by MS. SUSANNE BURTON

STAFF:

MR. CHARLES WARREN, Executive Officer  
MR. JAMES TROUT, Assistant Executive Officer  
MR. ROBERT C. HIGHT, Chief Counsel  
MS. PATSY TOMASELLO, Commission Executive Secretary

ALSO PRESENT:

MR. JAN STEVENS, Deputy Attorney General

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P R O C E E D I N G S

1  
2           ACTING CHAIRMAN MCCARTHY: Good morning, ladies  
3 and gentlemen. This is a meeting of the State Lands  
4 Commission. My name is Leo McCarthy. On my left we have  
5 Susanne Burton representing the Department of Finance, and  
6 on my right we have Cleatta Simpson representing the State  
7 Controller's Office.

8           I have a request from Mr. Robert Madox to speak on  
9 Consent Item Number 33, so we will pull that from the  
10 Consent Calendar along with the following Consent Items,  
11 2(B), 7, 9, 24, 27, 38, 39, 59 and 60.

12           Are there any other items, Mr. Warren, that should  
13 have been pulled from the Consent Calendar?

14           EXECUTIVE OFFICER WARREN: Yes.

15           ACTING CHAIRMAN MCCARTHY: Pardon me. We are  
16 putting 33 on the Regular Calendar for hearing.

17           EXECUTIVE OFFICER WARREN: In as much as there are  
18 other Consent items on the Consent Calendar that are related  
19 to Item 33, I suggest that they, too, be removed from the  
20 Consent Calendar.

21           ACTING CHAIRMAN MCCARTHY: That would be 10, 12  
22 and 32.

23           EXECUTIVE OFFICER WARREN: Thirty-two, yes, Mr.  
24 Chairman.

25           ACTING CHAIRMAN MCCARTHY: All right. We will

1 take 10, 12 and 32 and put those on the Regular Calendar as  
2 well.

3 EXECUTIVE OFFICER WARREN: And I would suggest,  
4 Mr. Chairman, that we will take those four items as a group.

5 ACTING CHAIRMAN MCCARTHY: That's fine.

6 EXECUTIVE OFFICER WARREN: There is one other item  
7 on the Consent Calendar which I have received a request to  
8 remove, and that is Item 45, having to do with the Gaviota  
9 Interim Marine Terminal and a hold-over period --

10 ACTING CHAIRMAN MCCARTHY: And put it on the  
11 Regular Calendar?

12 EXECUTIVE OFFICER WARREN: Put it on the Regular  
13 Calendar, yes.

14 ACTING CHAIRMAN MCCARTHY: Consent Item Number 45  
15 will be pulled from Consent and placed on the Regular  
16 Calendar so it may be addressed by any members of the public  
17 who desire.

18 So just to review, now, in addition to the Consent  
19 items that I mentioned earlier, we have now taken 10, 12, 32  
20 and 33 from the Consent Calendar and put them on the Regular  
21 Calendar and they will be taken as a group.

22 We have also taken 45, which was not on my consent  
23 list --

24 EXECUTIVE OFFICER WARREN: I am sorry?

25 ACTING CHAIRMAN MCCARTHY: Forty-five was not on

1 my Consent list.

2 ASSISTANT EXECUTIVE OFFICER TROUT: It wasn't  
3 pulled, it was just moved over.

4 ACTING CHAIRMAN MCCARTHY: It wasn't pulled. I  
5 thought I heard you just say that it was to be pulled from  
6 the Consent Calendar.

7 EXECUTIVE OFFICER WARREN: And put on the Regular  
8 Calendar.

9 ACTING CHAIRMAN MCCARTHY: Okay. We will put it  
10 on the Regular Calendar.

11 All right. Without objection, the minutes of the  
12 last Commission meeting are approved.

13 Mr. Warren, would you please begin the Regular  
14 Calendar.

15 EXECUTIVE OFFICER WARREN: Mr. Chairman, it is my  
16 recommendation that the Commission proceed as follows, that  
17 first you take up the Consent Calendar items, the remaining  
18 Consent Calendar items.

19 ACTING CHAIRMAN MCCARTHY: All right. Without  
20 objection, the Consent Calendar, as it now stands -- yes.

21 CHIEF COUNSEL HIGHT: With one possible exception,  
22 Mr. Chairman.

23 Item 35 is a recreational pier permit at Lake  
24 Tahoe. It includes three mooring buoys. We would like to  
25 remove the authorization for the three mooring buoys because

1 they may be in a fish habitat area and we will come back to  
2 you next month with that.

3 But that is what we would like, just to remove the  
4 authorization for the three buoys.

5 ACTING CHAIRMAN MCCARTHY: Any objection to that?

6 ACTING COMMISSIONER SIMPSON: No.

7 ACTING COMMISSIONER BURTON: No.

8 ACTING CHAIRMAN MCCARTHY: All right. Without  
9 objection, that will be done.

10 Let's get started.

11 The Consent Calendar is adopted unanimously and we  
12 will start on the regular agenda.

13 EXECUTIVE OFFICER WARREN: All right.

14 With the Commission's permission, I recommend that  
15 we proceed with the Regular Calendar as it appears in your  
16 binder to be followed by Item 45 and then Items 33, 32, 12  
17 and 10 as they appear in your Consent Calendar.

18 Will that be all right?

19 ACTING CHAIRMAN MCCARTHY: Yes, that's fine.

20 EXECUTIVE OFFICER WARREN: All right.

21 To take you to, first, the Regular Calendar, the  
22 first item is number 75, which will be presented by Jane  
23 Sekelsky, who is the Chief of our Land Management Division.

24 She will also present to you subsequent items for  
25 which her division is responsible.

1 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Okay.  
2 Item 75 considers the approval of a general lease to the  
3 C & H Sugar Company for a parcel of tide and submerged land  
4 located in the Carquinez Straits near Crockett in Contra  
5 Costa County.

6 C & H has at this point in time four Chapter  
7 leases which were granted by the Legislature back in the  
8 1920's and 1930's. And they are about to expire within the  
9 next few years.

10 C & H would like to have a lease to go on from  
11 this point in time and we have negotiated a lease with them  
12 for a 30-year term. The rental will be \$328,375 a year.  
13 This will replace the four Chapter leases under which they  
14 have been operating thus far.

15 As a matter of interest to you, and this is not on  
16 your calendar item today, there is a proposal now before the  
17 State Energy Commission to construct a co-generation plant  
18 at the C & H facility. That is not before you at this  
19 point in time and it is not a project for which C & H is a  
20 proponent. It is a separate entity that is proposing that  
21 project.

22 If that project is to go through, the lease to  
23 C & H would require an amendment, and we are not asking you  
24 in any way to authorize that at this time. And the lease  
25 expressly says that this does not constitute an



1 authorization of that project.

2 ACTING CHAIRMAN MCCARTHY: Questions by Members of  
3 the Commission?

4 Questions from the audience on this item? We are  
5 on 75.

6 The recommendation is approved.

7 Next item.

8 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 76  
9 is asking authorization for a general permit for an  
10 industrial outfall. The outfall will release salt water  
11 into deep water in the Carquinez Straits. The Rhone-Poulenc  
12 Chemical Company, which has operated the outfall in the  
13 past, has had an outfall going into shallow waters in Peyton  
14 Slough. The Regional Water Quality Control Board has been  
15 concerned about the impact of that release and has ordered  
16 them to construct a new outfall.

17 We are here to ask authorization for that at this  
18 point in time.

19 ACTING CHAIRMAN MCCARTHY: Any questions from the  
20 Commission?

21 Any questions from the audience on Item 76?

22 The recommendation is approved.

23 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 77  
24 is requesting authorization for a revision in rent pursuant  
25 to the normal five-year rent review provision with regard to

1 the River View Marina. It is a marina up here in the  
2 Sacramento River in Sacramento. The terms of the proposed  
3 rent are on Page 2 of the calendar item.

4 ACTING CHAIRMAN MCCARTHY: Questions from the  
5 Members of the Commission?

6 ACTING COMMISSIONER BURTON: No.

7 ACTING CHAIRMAN MCCARTHY: Anyone in the audience  
8 wish to address this item?

9 Mr. Ed Coyne.

10 MR. COYNE: Yes, sir.

11 ACTING CHAIRMAN MCCARTHY: Yes, Mr. Coyne, I do  
12 have your slip here. Why don't you please have a seat and  
13 let us hear your testimony.

14 MR. COYNE: Thank you.

15 My name is Ed Coyne. I am a partner in River View  
16 Marina. I am also a representative of the Marina and  
17 Recreation Association, which is a state-wide organization  
18 of small businesses involved in the marine industry.

19 The first thing I would like to ask is for a  
20 clarification of the Commission's goals in setting rental  
21 rates. The issue before you has to do with setting the  
22 rental rates for River View Marina.

23 According to Title 2, Article 2 of the California  
24 State Administrative Code regarding this question, rental  
25 rates should be set to achieve a nine percent return on the

1 value of the property owned by the State or a percentage of  
2 gross income based on similar uses in the market. Our  
3 feeling, both as an owner of River View Marina, and also as  
4 a member of the Marina Recreation Association is that  
5 whichever method is utilized should yield approximately the  
6 same rental payment to the State.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Would  
8 you like us to respond to these questions as you raise them?

9 ACTING CHAIRMAN MCCARTHY: What is your feeling,  
10 Mr. Coyne? We don't want to interrupt your statement.  
11 Would you like a response to that point by point?

12 MR. COYNE: That would be fine. We have a letter  
13 of response to that particular -- not to that particular  
14 question but to some specifics that we have laid out in a  
15 letter. What we believe we got back was identification of  
16 some rents that exist in the market that are as high or  
17 higher than this particular marina's rates.

18 But our feeling is that the fair market rent  
19 should be what is prevalent in the market or what is typical  
20 in the market or what gives a fair return to the small  
21 business owner, and not necessarily the highest identifiable  
22 rate which we would equate with rent gouging.

23 ACTING CHAIRMAN MCCARTHY: How does the statute  
24 read?

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: The

1 statute -- What he's referring to is in our regulations, and  
2 the regulations provide that the Commission will set rents  
3 based on either/or or a combination thereof of the following  
4 factors. One is the nine percent of the appraised value,  
5 and then the other is the percentage of gross receipts.

6 Typically in a situation as in a commercial marina  
7 as Mr. Coyne is operating, we combine those factors. We  
8 charge a percentage of gross receipts against an annual  
9 minimum rent which is based to some degree on the value of  
10 the property.

11 The State's responsibility obviously is to ensure  
12 a fair return to the State. Otherwise we run into problems  
13 with the gift laws.

14 ACTING CHAIRMAN MCCARTHY: Are there any cases  
15 that suggest the statute requires that the lower of those  
16 two options be utilized, if there is a lower?

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Not that  
18 I am aware of.

19 CHIEF COUNSEL HIGHT: No, sir.

20 ACTING CHAIRMAN MCCARTHY: You have examined the  
21 leases provided by private landowners that you consider  
22 comparable?

23 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: We have  
24 examined the market in the Sacramento area which we consider  
25 to be applicable to Mr. Coyne's situation. We have another

1 lease that is next door to Mr. Coyne, to the Riverbank  
2 Marina, and we have examined that relative to his concern as  
3 well.

4 ACTING CHAIRMAN MCCARTHY: Is that a fair  
5 comparison, Mr. Coyne?

6 MR. COYNE: I think there is significant  
7 unfairness in the situation at the Riverbank Marina. We  
8 have hired an appraiser. That is, the Marina Recreation  
9 Association has hired an appraiser to evaluate the value of  
10 the property that the State owns underlying the marinas, and  
11 also some of the restaurants that are floating on the water.

12 It's an extreme example, but in the case of the  
13 Crawdad's Marina, our appraiser has identified that the per-  
14 acre value, if the rents would be fair, of the approximately  
15 5,000 square feet of land owned by the State underlying  
16 Crawdad's, that that property would be worth approximately  
17 three and a half million dollars per acre. This seems  
18 outrageous to us. It seems outrageous to our appraiser.  
19 And we don't think that there has been adequate effort made  
20 to identify the fair market rents based on the land that the  
21 State owns under that property.

22 ACTING CHAIRMAN MCCARTHY: Any questions by  
23 Commissioners?

24 Would you like to respond to that?

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Mr.

1 Coyne is raising several issues here that, in fact, have  
2 been under discussion with the Association, the Marina  
3 Recreation Association that he represents, with both Mr.  
4 Coyne and some of the other representatives of the  
5 Association.

6 We have examined the issues that he has raised.  
7 We last met with this group in July and sent a letter on  
8 August 19th explaining our concerns and our belief in our  
9 position, and substantiating that the Marina Recreation  
10 Association agreed at the meeting in July to send us a  
11 report from their appraiser indicating why they feel that  
12 our methods are not appropriate and not consistent with the  
13 market and not fair. And we have not yet received that from  
14 them.

15 MR. COYNE: True, we have not yet responded to  
16 that letter of the August 19th. We intend to as a group.

17 River View Marina's issue is before you today at  
18 staff's request. Perhaps this particular item should be  
19 delayed until there is some resolution of the rent-setting  
20 issue.

21 EXECUTIVE OFFICER WARREN: On that point, Mr.  
22 Chairman, I would just like to point out that Mr. Coyne is  
23 presently two years in arrears on his rent under the present  
24 lease and that in my numerous meetings with the Marina  
25 Recreation Association little has come -- which have taken

1 place over a matter of months, if not years -- little has  
2 come from what appears from time to time to be some general  
3 agreement. We search for a response from these folks and  
4 they can never get them. They all have different individual  
5 objectives and they are just not able to reach any consensus  
6 among themselves.

7 One formula favors one group and another formula  
8 favors another group and another formula favors another  
9 group. And what we are trying to do here is we are trying  
10 to bring some order to this entire marina rental structure  
11 and which is fair to the State and would prevent us from  
12 being charged for giving what would be a gift of the public  
13 property.

14 We think that what we have here is fair and is  
15 consistent with the market rate in the area and in the  
16 region itself. We think we would vigorously oppose any  
17 delay in establishing a new rent structure and that we just  
18 have no idea how long that might be, given precedence. It  
19 could be -- Well, I don't know how long it could be.

20 ACTING CHAIRMAN MCCARTHY: Questions from  
21 Commissioners?

22 ACTING COMMISSIONER BURTON: I have a question.

23 ACTING CHAIRMAN MCCARTHY: Commissioner Burton.

24 ACTING COMMISSIONER BURTON: Have we in the past  
25 employed any intermediary third-party reviewer when we have

1 had rent disputes? Do we have a process for doing that?

2 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: No.

3 ACTING COMMISSIONER BURTON: Or do we usually rely  
4 on the give and take of our own staff working with the  
5 leaseholder to come up with a solution?

6 CHIEF COUNSEL HIGHT: Yes.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes.

8 EXECUTIVE OFFICER WARREN: Is that to me,  
9 Commissioner Burton?

10 ACTING COMMISSIONER BURTON: To whomever.

11 EXECUTIVE OFFICER WARREN: It is my understanding  
12 that in the past it has essentially been a matter of  
13 negotiation between the staff and the applicant who seeks a  
14 lease of State property from us. And as a consequence we  
15 find that these leases have been of a variant form. What we  
16 are trying to do now is, within the extent permissible, to  
17 establish some categories of general applications to like  
18 marinas, to like marinas in the same area, in order to  
19 eliminate some of the disparities among the current leases.

20 We are not unsympathetic with the argument that  
21 the marina owners are offering, that each of them has to  
22 face a different set of circumstances, and what the staff is  
23 now doing is trying to bring some order into that condition.

24 ACTING COMMISSIONER BURTON: What is the change?

25 EXECUTIVE OFFICER WARREN: But we still haven't



1 been able to obtain any response from the Association itself  
2 because they don't really know what to advise us, frankly.  
3 So what we fall back on or what we are falling back on now  
4 is kind of establishing a general approach which is  
5 applicable to commercial marinas of like nature in a general  
6 area.

7 ACTING COMMISSIONER BURTON: What is the rate  
8 going from and to? Any idea of what that means in dollars?

9 EXECUTIVE OFFICER WARREN: The increase is about  
10 from \$7,000 a year, I believe, to \$8,000, so that the change  
11 would result in -- I am sorry.

12 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
13 the minimum annual rent. There are two factors here. The  
14 minimum annual rent is going from \$7,000 to \$8,000. The  
15 percentage of gross is broken down in this lease according  
16 to category of use. They are going from, I believe, five  
17 percent to five and one half percent of the gross income  
18 derived from the rental boats and docks, and they are being  
19 asked in their current lease, in their lease prior to this  
20 rental adjustment, they would be paying one percent of all  
21 other revenue derived from the leased premises.

22 In this case we have broken it down further in the  
23 proposed rent. One is to take three percent of the gross  
24 income generated on the lease premises for the snack bar and  
25 deli operations, one percent of the gross income derived

1 from the yacht sales, and it is my understanding that they  
2 have never had yacht sales on this property, nor is there  
3 any anticipated at this time.

4 MR. COYNE: No. We have a yacht broker on the  
5 property.

6 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Oh, do  
7 you?

8 MR. COYNE: Yes.

9 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: And ten  
10 percent of all other gross income generated from the leased  
11 premises with a minimum annual rental, again, of \$8,000.

12 ACTING COMMISSIONER BURTON: That's the new lease?

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That's  
14 the proposed lease, yes.

15 MR. COYNE: May I comment on that, please?

16 ACTING CHAIRMAN MCCARTHY: Yes.

17 ACTING COMMISSIONER BURTON: I am not sure I  
18 understand what that means in terms of dollars going from  
19 the old lease to the new lease.

20 MR. COYNE: Yes. I can give you that fairly  
21 precisely. I think we have been in business for about 11,  
22 going on 12 years at that site. We constructed the marina  
23 and completed it in 1981 or 1982. The first year of our  
24 operation, I believe our rents were approximately \$6,000.  
25 We were paying a percentage of the gross and I believe at

1 that time we had the highest rates that were set anywhere in  
2 these market areas. We were the leader in terms of setting  
3 what the market is.

4 Over the course of ten years, our rates to the  
5 State have doubled. In other words, they went from about  
6 \$6,000 to \$12,000, an increase of ten percent a year, far in  
7 excess of inflation.

8 Now, with the current increase in front of us, we  
9 are looking at, I think, approximately \$18,000 per year in  
10 rent. So we have gone over the course of ten or eleven  
11 years from \$6,000 to \$18,000. That is a 300 percent  
12 increase.

13 This has occurred during a time when the marina  
14 has not been operating profitably. Over that entire ten-  
15 year period, the marina has yet to get a return on the  
16 investment. It is carrying a cumulative loss of about  
17 \$70,000.

18 We have also paid to the State so far about  
19 \$85,000 in rent and the fact that we are behind in the rent  
20 is directly attributable to the lack of profitability.

21 And also my point on this specific example is that  
22 it's not the right time to be raising our rents by what I  
23 think is roughly 50 percent at this point and 300 percent  
24 over the ten-year time frame.

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: One

1 point, just to make sure that it is understood here that the  
2 staff has established the percentages in the proposed rent  
3 according to what the market rates are in this area.

4 Mr. Coyne is in arrears on the rent and has in  
5 various stages since 1987, I believe, been delinquent in his  
6 rent. At this point in time he is approximately \$25,000  
7 behind in his rent, and penalties and interest would take  
8 that up to about \$38,000.

9 MR. COYNE: We have come to an agreement with the  
10 staff and I thought that it was complete, that we have  
11 worked out a payment schedule to pay that off over the next  
12 16 months.

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
14 correct.

15 MR. COYNE: So we may have been in arrears, but I  
16 believe that we have come to an agreement on getting that  
17 paid as quickly as we can.

18 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
19 correct and that is not before you today.

20 ACTING CHAIRMAN MCCARTHY: Mr. Warren, are we  
21 having problems with other lessees of this nature that are  
22 significant?

23 EXECUTIVE OFFICER WARREN: Not individually, as I  
24 can recall. We have had discussions with representatives of  
25 this marina owners association. Some of them, as Mr. Coyne,

1 would prefer to have a flat fee like a nine percent of the  
2 appraised value. But there are others who say that this is  
3 undesirable because it is unrelated to their commercial  
4 activity. So when times get tough, they are stuck there  
5 with a flat rental fee.

6 So they have been encouraging us to go to a more  
7 or less percentage of the gross basis so that when times are  
8 good, our revenues would increase, and when times are bad,  
9 our revenues would go down.

10 So we have been kind of moving toward kind of a  
11 middle position where we have a minimum flat fee, but then  
12 with a percentage of the gross which gives them, we think,  
13 gives all the operators some flexibility and they can  
14 continue in business when times are bad, but when times are  
15 good, then we would benefit. And that's where we are going.

16 Now, Mr. Coyne, and I don't understand his  
17 personal business, would have the Commission go with the  
18 flat fee that would benefit him. But while it does benefit  
19 him, it would not benefit other marina owners with whom we  
20 have been discussing.

21 In our efforts to bring some rational approach to  
22 this entire marina leasing operation of the agency, this is  
23 what we are doing. We are trying to keep it within  
24 acceptable commercial levels. We check with appraisers. We  
25 check with the commercial rates. We look at lessee

1 operations on adjacent property to see if they have been  
2 successful. And it's a kind of a judgement call, influenced  
3 by negotiations with the lessee, with the applicant, as to  
4 how it works out. And it's a process which is incapable of  
5 being precisely defined, I have found, but we are trying to  
6 improve it so as to bring some certainty at least to the  
7 approach taken by the staff to these matters.

8 MR. COYNE: I am sorry, but at the risk of  
9 contradicting Mr. Warren, as a representative of the Marina  
10 Recreation Association, I can speak for them, and in fact  
11 wrote a series of letters that specifically stated what the  
12 Association's position is regarding the rents. We are not  
13 looking for a flat rent per se, but a rent based upon nine  
14 percent of the State's appraised value of its underlying  
15 property for whatever the use is, whether it is a marina use  
16 or it is a restaurant use or whatever. And I think that  
17 there is unanimity among our members or at least among the  
18 representatives of our organization that that is our  
19 position and that's what we are looking for.

20 Again, I am sorry to take so much time with this.  
21 I feel like it's a very detailed issue and it needs some  
22 additional work outside of this forum. But I'd like to see  
23 this issue delayed.

24 ACTING CHAIRMAN MCCARTHY: Our staff is telling us  
25 that a number of such meetings to try to resolve this have

1     been taking place, Mr. Coyne.

2                 MR. COYNE: Yes. I have attended every one of the  
3     meetings that has taken place in the last year. I have met  
4     with usually a group of three or four or even five members  
5     of the State Lands staff. At one of those meetings Mr.  
6     Warren attended, and I think he took a position that was  
7     different than the direction that we had been going in the  
8     course of a year.

9                 And I understand the constraints with the State  
10    budget that it's not reasonable to expect that rents should  
11    come down at this time. Our group feels, though, that the  
12    budget is not going to be balanced on the rents collected  
13    from these small businesses.

14                ACTING CHAIRMAN MCCARTHY: I don't think anybody  
15    intends that.

16                MR. COYNE: I know, but we think fair market rents  
17    should be objectively determined and I think that to have a  
18    dispute resolution process as suggested would be very  
19    valuable to everybody because what we find is we just get  
20    into a standoff, and it happens often, where the marina  
21    owners disagree with the rents that are being set. And  
22    there is no method for determining what the rent would be  
23    except to take it or leave it from what we get from staff.

24                ACTING CHAIRMAN MCCARTHY: Any further comments?

25                ACTING COMMISSIONER BURTON: Well, I didn't mean

1 to suggest that we needed a dispute resolution process. I  
2 was trying to find out whether we had one because I don't  
3 think that this body, the Commission Members, are any of us  
4 experts in the area, but we expect our staff to be and we  
5 expect them also to be able to come to a resolution on these  
6 matters.

7 The part that bothers me is two things. I support  
8 our effort to try to change the lease provisions so that we  
9 are getting fair market rent. It seems to me that we need  
10 to do that to protect the interests of the State and to not  
11 give away to leaseholders anything that we should be  
12 protecting on behalf of the citizens.

13 But I also am concerned that during the midst of a  
14 recession, when businesses are being very hard hit, we are  
15 implementing something that amounts to a 50 percent increase  
16 in the cost of doing business as it relates to our leases  
17 with a business such as this. And it would seem to me that  
18 that would make sense if their business were flourishing and  
19 that we were getting some percentage of that, but to have a  
20 50 percent increase in basically what amounts to a declining  
21 environment for activities that might generate those  
22 revenues doesn't make sense to me.

23 So I don't know how to resolve this but I  
24 certainly don't think we want to turn into a hearing body on  
25 what the appropriate rent levels are, but what we have our



1 staff presenting for us and this gentleman disputing --

2 EXECUTIVE OFFICER WARREN: If I may respond,  
3 Commissioner, I can only point out that staff is trying to,  
4 in an approach to these matters, has been trying to be  
5 equitable and fair within what it understands to be the  
6 legal requirements here. Any favoritism shown Mr. Coyne  
7 would have, it seems to me, an adverse effect on his  
8 competitors. This is a competitive industry. There is a  
9 marina facility adjacent to him which presently is paying  
10 very similar to that which we are imposing on Mr. Coyne.

11 Mr. Coyne has not suggested that we are doing  
12 anything that lacks equity or parity among marina operators.  
13 He's asking for some favoritism, it seems to me. And, you  
14 know, if he is allowed this, this puts his competitors at a  
15 disadvantage. And what we are trying to do is maintain  
16 parity and equity.

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I would  
18 like to add something to that as well.

19 Mr. Coyne has suggested that the rent that he has  
20 had to pay us or that he has owed us over the last several  
21 years has increased, but notice that the percentages of the  
22 gross revenue that he has been asked to pay have not  
23 increased. So if the rent that he had been owing us has  
24 increased, it is because his gross revenues have increased.

25 Now, at this point in time, we are proposing an

1 increase in the percentages only up to a market rate that is  
2 common in the area, and while I grant you that that will  
3 certainly result in an increase, assuming his gross stays  
4 the same or goes up, in what he owes us, it does not seem as  
5 though it would increase it to the extent that he is  
6 speaking of unless, of course, his gross is going up at the  
7 same time.

8 And on the overall issue that is before us with  
9 the MRA, we have been more than willing to discuss it with  
10 them. We have asked them to provide an appraiser's response  
11 to our appraiser's explanation, the basis for our studies  
12 and for our establishment of rent. And we have not yet  
13 received it.

14 And so I want to make sure that we are not  
15 confusing the overall issues which we are continuing to work  
16 with the MRA on, with Mr. Coyne's situation.

17 ACTING CHAIRMAN MCCARTHY: Mr. Warren, did I  
18 understand you to say that you are moving, if the Commission  
19 adopts this, you would be moving Mr. Coyne's rent up to what  
20 a competitor in the approximate area is already paying?

21 EXECUTIVE OFFICER WARREN: Yes.

22 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
23 correct.

24 ACTING CHAIRMAN MCCARTHY: Do you dispute that,  
25 Mr. Coyne?

1 MR. COYNE: I don't really dispute that, no. I  
2 think the distinction, though, is that there is a large  
3 increase that would go into the operation where we have the  
4 Jammin' Salmon Restaurant on the property, and that tenant  
5 was liable for one percent payment of his gross. And now  
6 that is going to three percent, so it's a 300 percent  
7 increase on him in particular on his situation, and I think  
8 his business would be jeopardized as a result of that.

9 ACTING CHAIRMAN MCCARTHY: Would you be paying  
10 more rent if the Commission approved this than your  
11 competitors are paying?

12 MR. COYNE: I think that these, as I understand  
13 it, these rents are being established based upon a study, a  
14 draft study that has been prepared by the staff, and it's  
15 different for different marinas.

16 I think that that study is flawed and that is what  
17 our appraiser should be responding to. I think that when  
18 the State Lands Commission is setting the rents in the  
19 market place, what happens is they continually ratchet up.  
20 And that's what is happening to us, whether we are getting a  
21 return on our investment or not.

22 I would say that it's -- that the rents that are  
23 being set for the berthage is equivalent roughly to what is  
24 happening in the market now, and also with the restaurant,  
25 but I think that they are way too high.

1           ACTING CHAIRMAN McCARTHY: Any other questions by  
2 Commissioners?

3           Does anybody else in the audience have anything to  
4 say about this?

5           Do I have a motion?

6           I will make a motion that we accept the  
7 recommendation of the staff on this issue.

8           Are you ready for a vote?

9           ACTING COMMISSIONER SIMPSON: Second.

10          ACTING CHAIRMAN McCARTHY: All right. How do you  
11 vote?

12          ACTING COMMISSIONER BURTON: I will vote aye.

13          ACTING CHAIRMAN McCARTHY: All right. The  
14 Commission unanimously accepts the recommendation of the  
15 staff.

16          The next item on the agenda, Item 78.

17          LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 78  
18 deals with a request by the Sacramento Yacht Club to  
19 reconstruct and expand their yacht club facilities and add a  
20 debris diverter and a few other facilities, including two  
21 pump out stations.

22          This is a situation where the yacht club has  
23 worked cooperatively with staff to design the project to  
24 avoid impacts to shoreline vegetation, and has agreed to  
25 grant to the State a conservation easement over their own

1 uplands to provide permanent protection for riparian  
2 habitat. We see this as a really good example of how we can  
3 work together with private industry to establish protection  
4 for riparian resources.

5 Because they are proposing to give us a grant deed  
6 for the conservation easement, I would like to read into the  
7 record an additional recommended finding which authorizes  
8 acceptance of that grant of easement that is not in your  
9 findings now, and that would read: "Authorize the Executive  
10 Officer to execute a certificate of acceptance and consent  
11 to recording of a grant deed of conservation easement from  
12 the Sacramento Yacht Club to the State of California acting  
13 by and through the State Lands Commission."

14 ACTING CHAIRMAN MCCARTHY: Any questions by  
15 Members of the Commission?

16 Any questions from the audience?

17 All right. The recommendation is approved.

18 Next item.

19 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 79  
20 is requesting an amendment of an industrial lease to Chevron  
21 for their El Segundo facility. You will recall in March,  
22 1991, a vessel traveling through the terminal area dragged  
23 its anchor and tore up one of the underground lines. The  
24 Chevron folks have provided for reconfiguration of the  
25 terminal to eliminate one of their terminal berths which

1 should improve the safety of the operation of the terminal.

2 ACTING CHAIRMAN MCCARTHY: Questions by Members of  
3 the Commission?

4 Anyone in the audience?

5 ACTING COMMISSIONER BURTON: I notice the  
6 statement that the amount is in dispute --

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
8 correct.

9 ACTING COMMISSIONER BURTON: -- in our  
10 information. What does that mean?

11 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
12 correct. As of October 1st of 1987, there was a rent  
13 review, a rent revision provision in their lease. We never  
14 resolved that with them.

15 We have proposed to them that that be adjusted as  
16 of that date by the CPI. We have not got agreement on that  
17 at this point in time.

18 ACTING CHAIRMAN MCCARTHY: I want to acknowledge  
19 the presence of Mr. Rod Spackman of Chevron, who is here and  
20 available to answer any questions if we have any. Thank you  
21 for your presence, Mr. Spackman.

22 Anyone else on this issue?

23 Thank you.

24 Anyone else on this issue?

25 Ready for action?

1 All right.

2 ACTING COMMISSIONER BURTON: So moved.

3 ACTING CHAIRMAN MCCARTHY: All right. It has been  
4 moved and unanimously accepted. It was moved by Ms. Burton  
5 for the authorization.

6 Next item.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 80  
8 is asking authorization for Arcata Ready-Mix to extract  
9 gravel from the Eel River in the County of Humboldt, an  
10 annual extraction of a maximum of a hundred fifty thousand  
11 cubic yards for commercial sale.

12 ACTING CHAIRMAN MCCARTHY: Any questions by any of  
13 the Commission?

14 ACTING COMMISSIONER BURTON: No.

15 ACTING CHAIRMAN MCCARTHY: Any questions from the  
16 audience?

17 The recommendation is adopted.

18 Next.

19 EXECUTIVE OFFICER WARREN: Well, Item 81, I will  
20 take, Mr. Chairman.

21 Essentially this is acceptance by the Commission  
22 of the offer of dedication of lateral public access  
23 easements to coastal properties. These dedications were  
24 obtained by the Coastal Commission. It is a lateral access  
25 and not a vertical access.

1           And since what we do is take these easements and  
2       add them to the sovereign interests of the State along the  
3       coast, this is by an agreement that we reached this among  
4       the various state agencies. And this will formalize the  
5       dedication of the acceptance for these specific easements  
6       designated.

7           I ask for approval.

8           ACTING CHAIRMAN MCCARTHY: Any questions by  
9       Members?

10          Any questions by members of the audience?

11          If not, it is approved unanimously.

12          EXECUTIVE OFFICER WARREN: Item 82, Mr. Chairman  
13       and Commissioners, concerns the marine oil terminal  
14       regulations which have been drafted and promulgated by our  
15       Division of Marine Facilities, and the Division Chief is  
16       Gary Gregory who will present the item to you.

17          ACTING CHAIRMAN MCCARTHY: Question by Members of  
18       the Commission?

19          EXECUTIVE OFFICER WARREN: Maybe a word from Mr.  
20       Gregory would be in order here.

21          ACTING CHAIRMAN MCCARTHY: Absolutely.

22          MR. GREGORY: Yes, sir, Mr. Chairman. These are  
23       regulations based upon the Lempert-Keene-Seastrand Oil Spill  
24       Prevention and Response Act to provide the best achievable  
25       protection standard given our current level of knowledge as



1 required by the Act. It will impact the marine oil  
2 terminals, both onshore and offshore terminals, in the State  
3 of California and will provide comprehensive regulations for  
4 the operation and maintenance of these terminals.

5 ACTING CHAIRMAN MCCARTHY: All right.

6 I am impressed with the work developed in these  
7 regs.

8 Does anyone have any questions from the  
9 Commission?

10 ACTING COMMISSIONER BURTON: Just one. Have we  
11 resolved all of the outstanding issues that were raised, all  
12 the issues that were raised during the public hearing  
13 process?

14 ACTING CHAIRMAN MCCARTHY: Well, anybody in the  
15 audience wish to address any point in these proposed  
16 regulations?

17 EXECUTIVE OFFICER WARREN: To our knowledge, all  
18 concerns have been addressed satisfactorily.

19 ACTING COMMISSIONER BURTON: Okay.

20 ACTING CHAIRMAN MCCARTHY: All right.

21 Thank you, Mr. Gregory.

22 The Commission unanimously adopts the  
23 recommendations.

24 EXECUTIVE OFFICER WARREN: Mr. Chairman, the next  
25 item I suggest we take would be Item C33 which concerns a

1 recreational pier lease.

2 ACTING CHAIRMAN MCCARTHY: Before we proceed on  
3 that item, I have acknowledged the presence on Item 79 of  
4 Mr. Rod Spackman. I should also announce the presence of  
5 Mr. Louis Dye, also with Chevron, USA Products. If he still  
6 is here, fine.

7 Thank you.

8 All right. Now we are on Item 33.

9 EXECUTIVE OFFICER WARREN: I'd like to have that  
10 item presented by Jane Sekelsky and also I'll ask Peter  
11 Pelkofer to join her. Mr. Pelkofer is Senior Attorney in  
12 our legal division.

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item  
14 Number 33 is to request the termination of a recreational  
15 pier permit and issuance of a general pier permit to  
16 Chinquapin Homeowners Association, a facility in Lake Tahoe.

17 I believe there is a representative of Chinquapin  
18 who is here on an issue that is common to this permit as  
19 well as to three others. I think they were Items C10, 12  
20 and 32.

21 ACTING CHAIRMAN MCCARTHY: Mr. Robert Madox has  
22 signed in. He will want to give testimony in just a moment  
23 on Item 33, so we are addressing 32 and 33 together here,  
24 and we say that items 10 and 12 are also related to this  
25 issue.

1 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Only as  
2 to this one particular issue. The other items, 10, 12 and  
3 32, involve other permitting issues, but there is one issue  
4 in common to all.

5 ACTING CHAIRMAN MCCARTHY: All right. And that's  
6 the issue we will address now.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is  
8 correct.

9 The issue is with regard to the amount of rent  
10 that will be charged for this permit. In the past, and  
11 Peter may want to go into this, -- In fact, Peter, why don't  
12 you go ahead and discuss the issue?

13 SENIOR COUNSEL PELKOFER: Peter Pelkofer, Senior  
14 Counsel, State Lands Commission.

15 The issue is an issue of the eligibility of a  
16 homeowner's association to receive rent free or some form of  
17 pro rata rent under the statute which provides for rent-free  
18 permits for littoral land owners.

19 In this particular case, Chinquapin has been  
20 privileged over the last number of years to have a rent-free  
21 status based on a review of their status and a number of  
22 other associations who are in that type of position, and in  
23 a legal opinion which I drafted at the request of senior  
24 staff, they are no longer or never were, quite frankly,  
25 entitled to that status. And because they are up for rent

1 review at this time, they are raising the question of  
2 whether or not they should maintain the rent-free  
3 eligibility or whether they should be required to pay rent.

4 And I think Mr. Madox can more properly present  
5 his perspective than I can. And I'd be happy to respond to  
6 it or to any questions that the Commission might have.

7 ACTING CHAIRMAN MCCARTHY: Thank you.

8 EXECUTIVE OFFICER WARREN: I would only like to  
9 add to Mr. Pelkofer's statement that the statute exempts  
10 from the rent obligations natural persons who are owners of  
11 littoral property within a certain distance from the  
12 shoreline. We have found that some of the leases, where  
13 this exemption has been applied, include unnatural persons,  
14 so the question, when this issue was visited, Chinguapin was  
15 found to be composed of natural and unnatural persons and  
16 therefore determined by staff to have the exemption  
17 legislatively crafted not apply.

18 I think Chinguapin perhaps wants to make the case  
19 of -- Well, I don't know what their case is. I will leave  
20 it to them.

21 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I would  
22 like to add also that the other three items that are before  
23 you that are part of this issue in common, in none of those  
24 cases has the applicant objected. They have all agreed to  
25 the rent as the staff has set it in accordance with the

1 legal advice we have and there has been no issue raised by  
2 those parties.

3 ACTING CHAIRMAN MCCARTHY: All right. Let's  
4 please give Mr. Madox a seat.

5 Mr. Madox, would you like to step forward?

6 Welcome and let us hear what you would like to  
7 say.

8 MR. MADOX: Thank you, Mr. Chairman and Members of  
9 the Commission.

10 I am starting to feel a little uncomfortable that  
11 I am being accused of representing someone unnatural --

12 (Laughter.)

13 MR. MADOX: -- but I think I can deal with that.

14 As the name of my client indicates, Chinguapin  
15 Homeowners Association is a homeowners' association whose  
16 members are the owners of the 172 homes at Chinguapin. Each  
17 home is zoned as a single family residence. Each member is  
18 entitled to use the pier which is the subject of this  
19 application and each residence is located within one mile of  
20 the pier.

21 The statute that we are discussing today is Public  
22 Resources Code Section 6503.5, which states in pertinent  
23 part that no rent shall be charged for any private  
24 recreational pier constructed on state lands for the use of  
25 a littoral landowner. Littoral landowner is defined to

1 include among other things any association of or any  
2 nonprofit corporation consisting of natural persons who own  
3 parcels of land, each of which is zoned or used solely for a  
4 single family dwelling.

5 Out of the hundred and seventy-four homes at  
6 Chinquapin, apparently three or four are owned by  
7 corporations. I believe that they are all closely held  
8 corporations and I think and I do know that in one instance  
9 it is a San Francisco law firm, which is a professional  
10 corporation, which owns that particular town house.

11 The issue before you, then, is because three or  
12 four residences are owned by corporations, do all homeowners  
13 at Chinquapin lose the benefits of Public Resources Code  
14 Section 6503?

15 There are two legal arguments that we think  
16 strongly support our position that there should be an  
17 allocation or an apportionment of the usual rent based upon  
18 the number of corporations as a percentage of the total  
19 number of residences at Chinquapin, and those two legal  
20 bases are first, the legislative history of Public Resources  
21 Code Section 6503.5, and secondly, the equal protection  
22 clause of the 14th Amendment of the United States  
23 Constitution.

24 First, regarding the legislative history, I'd like  
25 to quote from something that a legislative intent service

1 has provided me, and that is the statement that in applying  
2 the rules of statutory construction, the courts of  
3 California, as well as those of most other jurisdictions,  
4 have routinely held that the cardinal principle of statutory  
5 construction is that the court must choose the  
6 interpretation which most nearly effectuates the purpose of  
7 the Legislature.

8           Since 1955, the State Lands Commission has been  
9 required by law, formerly the PRC 6503, to grant rent-free  
10 leases on state lands for private recreational piers owned  
11 by littoral landowners. Eligibility under that law has been  
12 limited to natural persons who owned individual parcels of  
13 land bordering on state lands.

14           In 1975, the California Attorney General issued a  
15 formal opinion that rent-free recreational piers constituted  
16 gifts of public property. The opinion inferred that such  
17 permits were gifts, absent specific legislative findings of  
18 public benefits stemming from the issuance of rent-free  
19 recreational pier permits.

20           And Senator John Nejedly addressed the legislative  
21 intent question with SB 349, in 1977, which provided the  
22 findings that were required and simply repeated the former  
23 law that owners of single family residences were entitled to  
24 the rent-free pier. And the question arose after that  
25 enactment in 1977 as to what about homeowners associations?

1           So at least prior to the statute that we are now  
2     relying on, that is in 1977, owners of single family  
3     residences, who are natural persons, were entitled to the  
4     rent-free provisions for a pier on state lands and  
5     corporations were not.

6           In 1978, then Senator Nejedly sponsored another  
7     bill, SB 1937, which recognized that the rent-free  
8     provisions of Public Resources Code Section 6503.5 had been  
9     applied by the State Lands Commissions only to individual  
10    persons, and the purpose of SB 1937 in 1978 was to place  
11    homeowners associations in the same position as individual  
12    littoral landowners. The State Lands Commission opposed the  
13    bill, but the bill was passed nonetheless.

14          In opposing the bill, the State Lands Commission  
15    made no reference at all to the issue of natural persons.  
16    That was simply -- it really wasn't dealt with.

17          In the letter to the Governor regarding the bill,  
18    Senator Nejedly stated that "accordingly this bill would  
19    redefine littoral landowner to make certain neighborhood  
20    homeowners associations eligible for a rent-free lease of  
21    state lands for a recreational pier on the same basis that  
22    individual owners are eligible."

23          And that type of statement is repeated throughout  
24    the legislative history. The purpose of that bill, the  
25    current Public Resources Code 6503.5, was to put homeowners



1 associations on the same standing as individuals.

2           Apparently, prior to the current year, 1992, staff  
3 of the State Lands Commission has dealt with this issue by  
4 apportioning the total rent that would be due and applying a  
5 ratio where the numerator is the number of unnatural  
6 persons, I believe that would include trusts as well as  
7 corporations, as a percentage of the total. We know that  
8 that interpretation has been applied to a number of other  
9 homeowners associations at Lake Tahoe, and it is only this  
10 year that there is an attempt made to change that.

11           We think that the apportionment approach is  
12 entirely consistent with the legislative purpose of Public  
13 Resources Code 6503, and in fact the statute itself, and  
14 that to now change the law or to change the way that the law  
15 is being dealt with by the State Lands Commission flies in  
16 the face of the legislative purpose of the statute. And  
17 also, because of the prior interpretation and putting  
18 Chinquapin in a different position than others in the past,  
19 there's a letter that I have written, and I don't know if  
20 you have seen that, but I have relied on the equal  
21 protection clause of the Constitution as you can treat one  
22 group or a group of people differently from the way that you  
23 have treated others in the past.

24           So that's the position that we take and I'd be  
25 happy to answer any questions.

1           ACTING CHAIRMAN MCCARTHY: Any questions at this  
2 point?

3           ACTING COMMISSIONER BURTON: No.

4           ACTING COMMISSIONER SIMPSON: No.

5           ACTING CHAIRMAN MCCARTHY: All right. Would the  
6 Commission staff like to respond?

7           EXECUTIVE OFFICER WARREN: Well, I would like to  
8 comment on the latter point of equal protection of the law.  
9 While it is admitted that in other instances presently  
10 before you that action that the staff recommends varies from  
11 what staff has recommended to you in similar cases in the  
12 past, staff's recommendation is based upon a legal position  
13 which has been thoroughly briefed and which is convincing  
14 that staff action in the past is not warranted by the  
15 statute, that it is contrary to what the Legislature has  
16 provided.

17           Staff felt that it had no recourse but to correct  
18 action, its actions, which are clearly contrary to its  
19 statutory authority. In doing so staff intends not to apply  
20 it retroactively, however. We are not going back to current  
21 leases and revising these leases.

22           We will apply the statute to the leases as they  
23 come up for renewal. There are four leases up before you  
24 today for renewal. All four of them are being treated the  
25 same way.

1           Three of them, three of the applicants, have found  
2 staff's interpretation of the statute to be correct and have  
3 indicated their willingness to comply with the new lease  
4 provisions. Chinguapin feels that staff's interpretation is  
5 incorrect for the reasons which have been stated.

6           It is our intention, depending upon Commission  
7 concurrence, to apply this to all the leases as they come  
8 before us in the future. So there should be no equal  
9 protection of the laws issue before you.

10           On the other point, we have, in your information  
11 presented to you, a rather detailed chronology of the  
12 development of the Resources Code Section 6503.5, including  
13 letters, legislative staff memoranda, which clearly set  
14 forth a record indicating that staff's interpretation of the  
15 statute in the past has been incorrect.

16           In as much as this statute is one which carves out  
17 an exemption from existing law, that is that there should be  
18 no gift of public property, in as much as this is a  
19 legislative exemption from that Constitutional provision, we  
20 felt it has to be interpreted strictly, and that's what we  
21 are doing.

22           If we are wrong, then we think that it is to the  
23 Legislature that Chinguapin and others should turn for  
24 legislative correction.

25           So we continue to urge the Commission to concur

1 with staff recommendations in this instance.

2 ACTING CHAIRMAN MCCARTHY: Mr. Madox, you  
3 represent the homeowners association as you appear here?

4 MR. MADOX: Yes, sir.

5 ACTING CHAIRMAN MCCARTHY: You don't represent any  
6 of the individual members of the association?

7 MR. MADOX: Not separately from being the attorney  
8 for the association.

9 ACTING CHAIRMAN MCCARTHY: Do you have an interest  
10 in, or do you belong to a group that has an interest in one  
11 of the members of the association that would be affected by  
12 this individually?

13 MR. MADOX: No, sir.

14 ACTING CHAIRMAN MCCARTHY: So your interest  
15 appearing here is to represent the homeowners association?

16 MR. MADOX: Yes, sir.

17 ACTING CHAIRMAN MCCARTHY: Is the homeowners  
18 association a voluntary group?

19 MR. MADOX: No.

20 ACTING CHAIRMAN MCCARTHY: Are they bound  
21 together? Do the single family dwellings that are members  
22 of the homeowners association have the ability to exclude  
23 corporate members in the association?

24 MR. MADOX: No. The Declaration of Covenants,  
25 Conditions and Restrictions, commonly known as CC and R's

1 spells out that each person who owns a unit at Chinguapin is  
2 thereby a member of the association, no matter what the form  
3 of ownership.

4 ACTING CHAIRMAN MCCARTHY: So if we have a  
5 situation where there are a hundred seventy-four homes and a  
6 hundred seventy-three of them are owned by corporations or  
7 trusts, as I understood your presentation, we would then be  
8 required to exempt the entire homeowners association.

9 MR. MADOX: No, sir, no.

10 ACTING CHAIRMAN MCCARTHY: What is your position?

11 MR. MADOX: I am suggesting that the legislative  
12 purpose would be followed by applying the analysis  
13 previously applied by your staff --

14 ACTING CHAIRMAN MCCARTHY: Apportionment.

15 MR. MADOX: -- which is the apportionment, yes,  
16 sir.

17 ACTING CHAIRMAN MCCARTHY: All right. But the  
18 staff is now telling us that that statute was incorrectly  
19 applied and they are trying to correctly apply the law.  
20 They think case law suggests that they are not authorized to  
21 apportion this.

22 MR. MADOX: I strongly feel, and I have taken a  
23 good hard look at this, that the prior interpretation of  
24 staff was the correct one because the purpose of the bill in  
25 1978 was to put homeowners associations on the same basis as

1 individuals, so the apportionment follows that just  
2 perfectly. If you had a hundred seventy-two homes there,  
3 all lakefront, one was owned by a corporation, and every one  
4 of them had a pier, which would be a terrible situation,  
5 this state would be entitled to collect the full rent on one  
6 pier but not on the others.

7 So the apportionment approach was the right  
8 approach. It follows the statute. And that's the position  
9 that we take, that that should simply be carried forward in  
10 1992 as it has been for 13 years prior.

11 ACTING CHAIRMAN MCCARTHY: Mr. Madox, let's assume  
12 for the moment that our staff's interpretation that they  
13 cannot apportion or prorate is the correct one. How would  
14 you suggest that we carry out the plain meaning of the law  
15 and make sure that corporations or trusts that own these  
16 properties are taxed and not exempt?

17 MR. MADOX: Well, you present me with a hypothesis  
18 that I, of course, disagree with, as you know.

19 ACTING CHAIRMAN MCCARTHY: I understand that.

20 MR. MADOX: If indeed the statute were clear, we  
21 would have to abide by that, you would have to abide by  
22 that, and as Mr. Warren has stated, our only remedy would be  
23 to go back to the Legislature. But I don't think that's the  
24 situation.

25 ACTING CHAIRMAN MCCARTHY: Any questions?

1 Mr. Warren, do you have anything else?

2 EXECUTIVE OFFICER WARREN: I just once again call  
3 the Commissioners' attention to Mr. Pelkofer's brief, a copy  
4 of which has been supplied to you, and on the last page  
5 there, the statute, 6503.5, is set forth, and the exemption  
6 from payment applies only to littoral landowners. And the  
7 statute goes on to define littoral landowners very  
8 precisely. And among the acceptable definitions of littoral  
9 landowners is that of an association which is composed in  
10 whole of natural persons. The Chinguapin association does  
11 not meet that statutory definition.

12 MR. MADOX: Mr. Chairman.

13 ACTING CHAIRMAN MCCARTHY: Mr. Madox.

14 Incidentally, where I said taxes before, I delete  
15 that. I meant rates.

16 MR. MADOX: I understand that. May I read the  
17 wording of the statute because I think that -- By the way, I  
18 have not been afforded the opportunity to review Mr.  
19 Pelkofer's brief, so I don't know what it says, but the  
20 statute says "littoral landowner means," and I will go down  
21 to (b), which is the --

22 ACTING CHAIRMAN MCCARTHY: Go ahead and read (a),  
23 too.

24 MR. MADOX: All right. I will read (a). "Any  
25 natural person or persons who own littoral land improved

1 with and used solely for a single family dwelling, or (b),  
2 any association of or any nonprofit corporation consisting  
3 of natural persons who own parcels of land, each of which is  
4 zoned or used solely for a single family dwelling, et  
5 cetera."

6 So it doesn't say that it consists entirely of --  
7 EXECUTIVE OFFICER WARREN: No, but the et cetera  
8 is important, though.

9 I'm sorry. The et cetera is important.

10 MR. MADOX: Okay. Then I should read the rest of  
11 it. "Any association of or any nonprofit corporation  
12 consisting of natural persons who own parcels of land, each  
13 of which is zoned or used solely for a single family  
14 dwelling and who are entitled to the use of a private  
15 recreational pier on littoral land that is owned by the  
16 association or nonprofit corporation and is not more than  
17 one mile from any such parcel owned by a member thereof."

18 All of those last items, as I introduced in the  
19 beginning of my comments, the Chinquapin homeowners  
20 association are satisfied. The issue is what does it mean  
21 when it says "an association consisting of natural persons  
22 who own parcels of land."

23 It doesn't say solely or entirely of natural  
24 persons, it simply says "consisting of."

25 The Legislature just simply didn't deal with the



1 specific issue back in 1978, but their purpose, as was  
2 stated, was to put associations on the same basis as  
3 individuals. So if an association is made up of a hundred  
4 seventy-two members, four of whom are corporations, the  
5 apportionment fits precisely with what the law would have  
6 been if we weren't dealing with associations.

7 ACTING CHAIRMAN MCCARTHY: Mr. Warren.

8 EXECUTIVE OFFICER WARREN: I am not saying that  
9 the Legislature could not do what counsel suggests. I am  
10 just saying that the Legislature has not done so yet. And  
11 until it does so, it seems to me, because this does carve  
12 out an exemption, we are bound to apply this law strictly as  
13 it is written in order to be consistent with legislative  
14 direction. That's what we are doing. Others agree with our  
15 interpretation.

16 And now the question is would we oppose a  
17 legislative effort to further modify lease terms? I don't  
18 know. That would be up to the Commission at that time.

19 ACTING CHAIRMAN MCCARTHY: Commissioner Simpson.

20 ACTING COMMISSIONER SIMPSON: Thank you. I am  
21 bothered by both sides of this argument, frankly. I am not  
22 sure, not being an attorney, exactly where it lies.

23 I would like to see staff, if it is appropriate,  
24 approach the Legislature and find out what legislative  
25 intent is on this. It's been a while since the issue was

1 visited by them and perhaps it is appropriate now to seek  
2 out a different interpretation for this statute to find out  
3 where they were coming from and what they actually intended.

4 EXECUTIVE OFFICER WARREN: Well, if I may respond  
5 to that, Commissioner, it is clear what the Legislature  
6 meant by the present language because, as Mr. Pelkofer's  
7 legal memorandum sets forth, time after time it was clear  
8 that this exemption would not apply to corporations or  
9 associations composed of a corporation.

10 Remember, in reference to a memo by Mr. Willoughby  
11 in 1978, who was then staff to the Resources, Land Use and  
12 Energy Committee, which at one time I had the privilege of  
13 chairing, that this exemption applied only to natural  
14 persons, not the corporations.

15 So we know what the legislative intention was at  
16 the time this statute was passed. What we don't know is,  
17 given the fact that some associations presently include  
18 corporations, whether the Legislature would want to extend  
19 it to such associations.

20 Now, this may be a change of circumstances. We  
21 don't know if in 1978, homeowner associations consisted of  
22 corporations. We do know that they do now, and whether or  
23 not the Legislature wants to extend the exemption to such  
24 associations is a matter that should be visited by the  
25 Legislature.

1           However --

2           ACTING CHAIRMAN MCCARTHY: Do we have examples of  
3 other homeowners associations around the State that include  
4 corporate members?

5           Beside this single, does the staff have examples  
6 of other homeowners associations around California that  
7 would present this kind of problem to us?

8           LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I  
9 believe that the concentration of homeowners associations  
10 attempting to qualify under 6503.5 will be in the Tahoe-  
11 Donner area. However, we do have some homeowners  
12 associations in the Bay Area, one of which is on the Consent  
13 Calendar today. They consist entirely of natural persons  
14 and have elected not to allow any corporate members.

15           There may also be some situations in Southern  
16 California where there are homeowners associations that have  
17 or have not corporate members. I can't confirm that for you  
18 right now.

19           ACTING CHAIRMAN MCCARTHY: Yes.

20           ACTING COMMISSIONER BURTON: I'd like to propose  
21 something. And I'm not sure I entirely understand exactly  
22 what generated this issue, but it seems to me having a  
23 longstanding practice of applying the statutes and  
24 interpreting the statutes in a certain way, that we should  
25 continue that practice absent any subsequent legislation

1 that would tell us to alter that practice. And that's kind  
2 of where I am coming from now.

3 SENIOR COUNSEL PELKOFER: Mr. Chairman, may I  
4 comment on that just briefly?

5 ACTING CHAIRMAN MCCARTHY: Go ahead.

6 SENIOR COUNSEL PELKOFER: While that has been the  
7 practice apparently, and in my research I attempted to  
8 determine how frequently the Commission had prorated and  
9 when it had not, Chinguapin itself as an example that would  
10 have fit under the proration but where no proration  
11 occurred, so I don't think there was a consistent policy.  
12 And to say that we should continue the policy because it had  
13 been applied on a regular basis, I think, is inappropriate.  
14 It had not been consistently applied. It had been applied.  
15 There are other examples of where it had been applied on  
16 other prorations, but for that very reason the issue was  
17 raised with me to make a determination or render an opinion  
18 as to what was the proper course to follow.

19 And while I agree with almost everything Mr. Madox  
20 says, I disagree with his conclusion. And I agree that the  
21 issue is, what does "consist of natural persons" mean? And  
22 my conclusion is the opposite of his, and that is that the  
23 Commission has no discretion and that the statute requires  
24 the Commission to interpret it in this fashion, and that if  
25 Mr. Madox has a problem with that, his solution is with the

1 Legislature.

2 MR. MADOX: Mr. Chairman.

3 ACTING CHAIRMAN MCCARTHY: Mr. Madox.

4 MR. MADOX: I believe that it's clear that prior  
5 to this year the policy of staff was not to charge full rent  
6 where even one member of an association was a corporation or  
7 a trust. They may not have applied any rent at all in some  
8 situations, but they never before this year attempted to  
9 apply the full rent provisions where one out of a hundred or  
10 out of two hundred was a corporation or something like that.

11 And I believe that there are a number of  
12 associations at Lake Tahoe where the rent has been  
13 apportioned. I believe the Tahoe Park Association, Rubicon  
14 Properties Owners Association and the Tahoe Tavern  
15 Homeowners Association have all been treated on an  
16 apportioned basis in a similar situation.

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes,  
18 that is correct. There are some. I can't confirm that  
19 those three have, but there are some that have been prorated  
20 since 1987.

21 As Mr. Warren has pointed out, we are working now  
22 with legal advice that tells us that we have no choice, that  
23 that was inappropriate, and that as those come up for rent  
24 review or for amendment to the lease, renewal of lease,  
25 whatever, we will be applying the statute as we are advised

1 by legal to do.

2 EXECUTIVE OFFICER WARREN: Unless, of course,  
3 otherwise directed by the Commission.

4 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes, of  
5 course.

6 (Laughter.)

7 ACTING CHAIRMAN MCCARTHY: Any further pearls of  
8 wisdom from anyone on the Commission?

9 I am going to ask that this be put over until the  
10 next meeting for a vote on the issue.

11 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: May I  
12 make one point on that?

13 ACTING CHAIRMAN MCCARTHY: Yes.

14 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: In the  
15 case of Chinguapin, we are about to run out the time clock  
16 on the Permit Streamlining Act. Therefore, if we are to put  
17 this over, the next meeting will not be before that deadline  
18 runs and we would like to ask that they withdraw and reapply  
19 without prejudice for that purpose in order to avoid that  
20 problem.

21 MR. MADOX: May I ask a question?

22 ACTING CHAIRMAN MCCARTHY: Go ahead.

23 MR. MADOX: What would that involve?

24 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Simply a  
25 letter to us stating that you are willing to withdraw and

1 reapply.

2 CHIEF COUNSEL HIGHT: Don't they have some  
3 construction?

4 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I don't  
5 know if we would have a problem with that.

6 MR. MADOX: I am not all together sure that -- I'm  
7 sorry.

8 CHIEF COUNSEL HIGHT: I thought we had some  
9 construction on one of the four.

10 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That may  
11 be correct.

12 SENIOR COUNSEL PELKOFER: Some of the other items,  
13 as has been pointed out, involve other issues, and in one  
14 case, even though the issue is involved, the rental wouldn't  
15 have changed. They are not objecting for that reason so I  
16 am not sure you want to take the same action on the non-  
17 objecting entities if you want to continue this one.

18 Clearly, if your determination were the opposite,  
19 we could go back and change anything that might affect them  
20 in a subsequent hearing.

21 EXECUTIVE OFFICER WARREN: All right. In carrying  
22 out the Chairman's wishes, I suggest on Item 33 that subject  
23 to the agreement by the applicant to waive 884 requirements,  
24 that would be put over for further consideration of the  
25 Commission.

1           ACTING CHAIRMAN MCCARTHY: I don't think this  
2 prejudices your case, Mr. Madox.

3           EXECUTIVE OFFICER WARREN: No.

4           On the other three items, then, I suggest that  
5 they be approved to enable the applicants to proceed with  
6 any construction deadlines that they have subject to the  
7 understanding that in the event the Commission later alters  
8 staff recommendations, that those leases will be modified to  
9 reflect the Commission's directions.

10          ACTING CHAIRMAN MCCARTHY: The other three leases  
11 also deal with proration.

12          EXECUTIVE OFFICER WARREN: Yes.

13          SENIOR COUNSEL PELKOFER: Yes.

14          LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Correct.

15          ACTING CHAIRMAN MCCARTHY: At this moment.

16          EXECUTIVE OFFICER WARREN: Correct.

17          ACTING CHAIRMAN MCCARTHY: If we vote on them  
18 today, that terminates the proration approach.

19          EXECUTIVE OFFICER WARREN: Yes.

20          SENIOR COUNSEL PELKOFER: Not if you change it,  
21 Mr. Chairman.

22          EXECUTIVE OFFICER WARREN: Well, subject to being  
23 changed, but then to reflect the action that you  
24 subsequently take on 33.

25          ACTING CHAIRMAN MCCARTHY: Well, how clear is it



1 that there is a problem about any construction?

2 SENIOR COUNSEL PELKOFER: It is clear.

3 ASSISTANT EXECUTIVE OFFICER TROUT: Just one, I  
4 think.

5 MR. AGAN: I am Kevin Agan of Vail Engineering  
6 representing the applicants of the remaining items here.

7 We are tied to an October 1st construction  
8 deadline, so it will be imperative to have these approved.  
9 I believe we have posted the necessary fees to have this  
10 project approved.

11 CHIEF COUNSEL HIGHT: Is Chinguapin an item which  
12 is under construction?

13 MR. AGAN: I would defer that to Mr. Madox.

14 EXECUTIVE OFFICER WARREN: He just represents the  
15 other three.

16 SENIOR COUNSEL PELKOFER: Mr. Agan is also the  
17 engineering consultant at Chinguapin and I thought he would  
18 know better than I. I am sorry. I don't know.

19 ASSISTANT EXECUTIVE OFFICER TROUT: It doesn't  
20 mention any construction.

21 MR. AGAN: For this project to proceed it would  
22 have to be approved today to be able to meet the  
23 construction deadline. It does have a construction deadline  
24 of October 1st also as set forth by the Tahoe Regional  
25 Planning Commission.

1           ACTING CHAIRMAN McCARTHY: Chinquapin has a  
2 construction deadline. Is that what you just said?

3           MR. AGAN: Yes.

4           ASSISTANT EXECUTIVE OFFICER TROUT: It appears  
5 that way.

6           SENIOR COUNSEL PELKOFER: Mr. Chairman, may I  
7 offer a suggestion?

8           ACTING CHAIRMAN McCARTHY: Yes.

9           SENIOR COUNSEL PELKOFER: Could the matter be  
10 approved to proceed and then the issue of the rent, if you  
11 wish, be deferred to another date and I'd be happy to  
12 provide a further briefing if necessary?

13          ACTING CHAIRMAN McCARTHY: The answer to that is  
14 yes.

15          SENIOR COUNSEL PELKOFER: Thank you.

16          ACTING CHAIRMAN McCARTHY: That will be the action  
17 of the Commission.

18          EXECUTIVE OFFICER WARREN: Fine.

19          ACTING COMMISSIONER BURTON: Could I ask a  
20 question, too?

21                 In terms of noticing this for the next meeting,  
22 could it be noticed as an item to review the rent practice,  
23 because on the calendar that we all received, which I assume  
24 is the public calendar, there is no specific mention of the  
25 memorandum, which I assume is also public, that has been

1 circulated -- but apparently has not been --

2 SENIOR COUNSEL PELKOFER: I have not received  
3 that.

4 ACTING COMMISSIONER BURTON: -- which provides the  
5 basis for this. So it seems to me that we should somehow  
6 get the issue itself here. It is not just the individual  
7 leases.

8 EXECUTIVE OFFICER WARREN: Okay.

9 ACTING CHAIRMAN MCCARTHY: Yes.

10 EXECUTIVE OFFICER WARREN: We will be so directed.

11 ACTING CHAIRMAN MCCARTHY: All right.

12 Now, the action that we just took pertains to all  
13 four items we are discussing here as a group, 10, 12, 32 and  
14 33.

15 EXECUTIVE OFFICER WARREN: Yes.

16 ACTING CHAIRMAN MCCARTHY: All right. They are  
17 all approved with that exception, the rental policy.

18 EXECUTIVE OFFICER WARREN: That will be fine.  
19 That will be fine.

20 ACTING CHAIRMAN MCCARTHY: Anything else?

21 All right. Thank you.

22 EXECUTIVE OFFICER WARREN: Thank you very much.  
23 And we will special order that issue at the next meeting.

24 ACTING CHAIRMAN MCCARTHY: Anything else to come  
25 before the Commission?

1 EXECUTIVE OFFICER WARREN: Yes, one other item,  
2 and that is Item C45 which was removed from the Consent  
3 Calendar and put on the Regular Calendar.

4 There are not persons present to testify on the  
5 item but nevertheless it is of sufficient significance that  
6 a few words of explanation might be of interest to the  
7 Commission.

8 ACTING CHAIRMAN MCCARTHY: Proceed.

9 EXECUTIVE OFFICER WARREN: The item concerns  
10 extending the hold-over period of a lease covering the  
11 Gaviota Marine Terminal. This lease had an expiration date  
12 of March, 1991 with a one-year hold-over period to March of  
13 1992.

14 The lease is for a marine terminal which has been  
15 constructed. It will be used, if at all, for the tankering  
16 Santa Ynez produced crude, produced in federal offshore  
17 waters. As the Commissioners may recall, several Chevron,  
18 Exxon and other companies are involved in the development of  
19 oil in the federal waters from several platforms which have  
20 been constructed.

21 Production has been held up, however, because of a  
22 dispute as to how such oil will be processed and  
23 transported. The County of Santa Barbara and others are  
24 insisting that the oil be transported to refineries in other  
25 facilities by pipeline. No such pipeline presently exists.

1           The oil companies have been seeking an alternative  
2           transportation means, that is tankering, until such time as  
3           the pipeline has been constructed and is available.

4           The terminal which is the subject of this lease  
5           was constructed for the purpose of facilitating  
6           transportation of the crude by tanker. Because of the  
7           dispute, all production has been suspended. The  
8           Administration recently developed a conciliation process  
9           which involved representatives of the County of Santa  
10          Barbara, third-party interest groups and State agencies and  
11          others to develop a process for resolving this dispute.

12          Steps in furtherance of the general agreement  
13          negotiated by the Administration are under way. The County  
14          of Santa Barbara has issued a conditional permit for the  
15          transport of Santa Ynez crude oil, but the conditions  
16          imposed have been found unacceptable by at least one of the  
17          oil producing companies, and that company has appealed the  
18          matter to the Coastal Commission for determination.

19          That appeal will be heard by the Coastal  
20          Commission at its next meeting believed to be in October.  
21          The Coastal Commission has a rule that it will not, and I am  
22          paraphrasing here, it will not process an item unless the  
23          applicant can show that it has an interest in the land  
24          involved.

25          The terminal is one -- The lease is such an

1 interest. In order not to disrupt this facilitation process  
2 and the resolution of the issues involved, it is staff's  
3 position that we should continue status quo the past lease  
4 at least until March of 1993. The hold-over provisions that  
5 we are recommending do not permit the use of the terminal,  
6 however. If the terminal is to be used at all, such use  
7 will have to come back to the Commission for determination.

8 It is hoped that at an appropriate time in the  
9 future that the parties, that is the County, the Coastal  
10 Commission, the oil industry and the Administration, will  
11 have resolved all disputes so that clearly the use of the  
12 lease will be by general agreement.

13 We are receiving \$15,000 a month but the lessee  
14 can't use it. Don't ask me to explain that.

15 So what we are asking you here is to extend the  
16 status quo as it has existed for the past several months,  
17 and as we see no policy implications, we are policy neutral  
18 in so far as the issues before other agencies.

19 It is staff's recommendation that this is the  
20 prudent path for the Commission and it strongly urges the  
21 recommended action.

22 ACTING CHAIRMAN MCCARTHY: Questions by  
23 Commissioners?

24 Questions from anyone in the audience?

25 Do you have a question?

1           ACTING COMMISSIONER SIMPSON: Yes.

2           Very late yesterday I received a communication  
3           expressing concerns with the action that was being proposed  
4           by staff on this item. It did come in so late I did not  
5           have a chance to fully explore those with the party that is  
6           raising those concerns.

7           There is no way to put this item over for another  
8           month, legally to put it over to look at that?

9           EXECUTIVE OFFICER WARREN: Well, of course, we can  
10          do so, but we cannot do so without causing considerable  
11          mischief. The mischief would be that the Coastal Commission  
12          could then argue that there is no substantive issue before  
13          it because the appellants could show no property interest as  
14          the Coastal Commission's rule requires.

15          ACTING CHAIRMAN MCCARTHY: What is the date of the  
16          Coastal Commission's hearing?

17          EXECUTIVE OFFICER WARREN: Pardon me?

18          ACTING CHAIRMAN MCCARTHY: What is the date of the  
19          Coastal Commissions's hearing on this matter?

20          MR. SANDERS: My name is Dwight Sanders, Mr.  
21          Chairman, staff, and I represent the Chairman of the  
22          Commission on the Coastal Commission.

23          The Commission's meeting is currently scheduled  
24          during the second week of October. To my knowledge the  
25          specific date of the item has not been set, but the meeting

1 begins, I believe, on the 13th and extends for four days.

2 ACTING CHAIRMAN MCCARTHY: So this matter may be  
3 on that calendar?

4 MR. SANDERS: It will be on that calendar, Mr.  
5 Chairman.

6 EXECUTIVE OFFICER WARREN: In further response to  
7 Commissioner Simpson's comments, staff has communicated with  
8 the authors of the correspondence to which she has  
9 referenced. We have talked with them yesterday afternoon.  
10 It is our impression -- It is my impression, at the least,  
11 that there is a misunderstanding by the communicant. They  
12 apparently believe that there are some policy implications  
13 involved here by the proposed action.

14 We tried to assure them that this was policy  
15 neutral and would not affect one way or another the decision  
16 by the Coastal Commission or any of the issues which are  
17 admittedly very complex and significant and need further to  
18 be resolved.

19 ACTING CHAIRMAN MCCARTHY: What do you think?

20 ACTING COMMISSIONER SIMPSON: Well, I don't know  
21 if it might affect the Coastal Commission.

22 ACTING COMMISSIONER BURTON: I don't have any idea  
23 of what issues have been raised. No one has raised any  
24 issues to me.

25 I will go along with the wishes of the Commission,



1 but it seems to me, based on the staff's representations  
2 here, that we need to proceed in order to allow the Coastal  
3 Commission to take their actions.

4 ACTING COMMISSIONER SIMPSON: Okay, if we have to  
5 proceed.

6 ACTING CHAIRMAN MCCARTHY: All right. The  
7 Commission accepts the recommendations.

8 EXECUTIVE OFFICER WARREN: Thank you.

9 ACTING CHAIRMAN MCCARTHY: Anything else to come  
10 before the Commission?

11 EXECUTIVE OFFICER WARREN: That concludes the  
12 agenda.

13 ACTING CHAIRMAN MCCARTHY: Thank you, ladies and  
14 gentlemen.

15 We are adjourned.

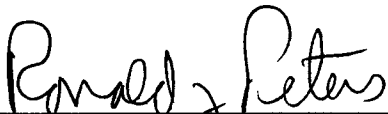
16 (Thereupon the September 23rd, 1992, meeting  
17 of the State Lands Commission was concluded  
18 at 11:35 a.m.)  
19  
20  
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25

CERTIFICATE OF SHORTHAND REPORTER

I, RONALD J. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission Meeting in shorthand and thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 14<sup>th</sup> day of October, 1992.

  
\_\_\_\_\_  
Ronald J. Peters  
Certified Shorthand Reporter  
License Number 2780